

LORDS AMENDMENTS TO THE
SCOTLAND BILL

[The page and line references are to HL Bill 79, the bill as first printed for the Lords.]

Clause 3

- 1** Page 3, line 25, leave out from “powers)” to end of line 34 and insert “after subsection (1) insert –

“(1A) Subsections (2) to (11), except subsection (9), apply also to the power of the Scottish Ministers to make an order under section 12.””

Clause 7

- 2** Leave out Clause 7

Clause 10

- 3** Leave out Clause 10

Before Clause 11

- 4** Insert the following new Clause –

“Continued effect of provisions ceasing to be within legislative competence

- (1) In section 30 of the 1998 Act (legislative competence: supplementary) after subsection (4) insert –

“(5) Subsection (6) applies where any alteration is made –

- (a) to the matters which are reserved matters, or
(b) to Schedule 4,

(whether by virtue of the making, revocation or expiry of an Order in Council under this section or otherwise).

- (6) Where the effect of the alteration is that a provision of an Act of the Scottish Parliament ceases to be within the legislative competence

of the Parliament, the provision does not for that reason cease to have effect (unless an enactment provides otherwise).”

- (2) After section 29(4) of that Act (legislative competence) insert –
- “(5) Subsection (1) is subject to section 30(6).”
- (3) In section 92 of that Act (Queen’s Printer for Scotland), after subsection (4A) (inserted by section 16) insert –
- “(4B) If, following an alteration such as is mentioned in section 30(5) –
- (a) subordinate legislation is made, confirmed or approved under a provision which continues to have effect by virtue of section 30(6), and
- (b) the making, confirmation or approval would be within devolved competence but for the alteration,
- the subordinate legislation is to be regarded for the purposes of this section as being made, confirmed or approved within devolved competence.””

Clause 12

- 5 Leave out Clause 12

Clause 13

- 6 Leave out Clause 13

Clause 15

- 7 Page 10, line 7, leave out first “the”
- 8 Page 10, line 7, leave out second “the”

Clause 17

- 9 Leave out Clause 17

Clause 22

- 10 Page 15, line 8, leave out “Scottish Crown Estate Commissioner” and insert “Crown Estate Commissioner with special responsibility for Scotland”
- 11 Page 15, line 13, leave out “Scottish Crown Estate Commissioner” and insert “Crown Estate Commissioner with special responsibility for Scotland”

Clause 25

- 12 Page 18, line 16, after “of” insert “regulations under section 86 or”
- 13 Page 18, line 18, after “the” insert “regulations or”
- 14 Page 18, line 25, at end insert –
- “() Section 86 (speed limits for particular classes of vehicles) is amended as follows.
- () For “Secretary of State” in each place substitute “national authority”.

- () After subsection (6) insert –
- “(7) The national authority in this section –
 - (a) as respects the driving of vehicles on roads in England and Wales, is the Secretary of State;
 - (b) as respects the driving of vehicles on roads in Scotland, is the Scottish Ministers.
 - (8) Regulations made by the Scottish Ministers under this section are subject to the affirmative procedure.
 - (9) Before making any regulations under this section the Scottish Ministers must consult with such representative organisations as they think fit.”

15 Page 19, line 8, at end insert –

- “() In section 134(4) (provision as to regulations under sections 86 and 140) after “Regulations made” insert “by the Secretary of State”.”

Clause 26

16 Page 19, line 15, leave out paragraph (b) and insert –

- “(b) omit paragraph (f) (sections 86(2) and 88(1) and (4)).”

Clause 27

17 Leave out Clause 27

After Clause 37

18 Insert the following new Clause –

“Reports on the implementation and operation of this Part

- (1) The Secretary of State must –
 - (a) make reports on the implementation and operation of this Part (see subsection (5)),
 - (b) lay a copy of each report before both Houses of Parliament, and
 - (c) send a copy of each report to the Scottish Ministers, who must lay a copy of it before the Scottish Parliament.
- (2) The Scottish Ministers must –
 - (a) make reports on the implementation and operation of this Part (see subsection (5)),
 - (b) lay a copy of each report before the Scottish Parliament, and
 - (c) send a copy of each report to the Secretary of State, who must lay a copy of it before both Houses of Parliament.
- (3) A report must be made under each of subsections (1) and (2) –
 - (a) before the end of the period of one year beginning with the day on which this Act is passed, and
 - (b) thereafter, before the end of each subsequent period of one year until the final reports are made under subsection (4).
- (4) Final reports must be made on or as soon as practicable after –

- (a) 1 April 2020, or
 - (b) if later, the first anniversary of the day on which the last of the provisions of this Part comes into force.
- (5) A report on the implementation and operation of this Part must include—
- (a) a statement of the steps which have been taken, whether by the maker of the report or by others, since the making of the previous report (or, in the case of the first report, since the passing of this Act) towards the commencement of the provisions of this Part,
 - (b) a statement of the steps which the maker of the report proposes should be taken, whether by the maker of the report or by others, towards the commencement of the provisions of this Part,
 - (c) an assessment of the operation of the provisions of this Part which have been commenced,
 - (d) an assessment of the operation of any other powers to devolve taxes to the Scottish Parliament or to change the powers of the Scottish Ministers to borrow money, and of any other changes affecting the provisions inserted or amended by this Part,
 - (e) the effect of this Part on the amount of any payments made by the Secretary of State under section 64(2) of the 1998 Act (payments into the Scottish Consolidated Fund), and
 - (f) any other matters concerning the sources of revenue for the Scottish Administration (within the meaning of section 126(6) of the 1998 Act) which the maker of the report considers should be brought to the attention of the Parliament of the United Kingdom or the Scottish Parliament.”

Before Clause 38

19 Insert the following new Clause—

“Convention rights and EU law: role of Advocate General in relation to criminal proceedings

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) For the italic heading before section 288A substitute “Convention rights and EU law compatibility issues, and devolution issues”.
- (3) After that heading insert—

“288ZA Right of Advocate General to take part in proceedings

- (1) The Advocate General for Scotland may take part as a party in criminal proceedings so far as they relate to a compatibility issue.
- (2) In this section “compatibility issue” means a question, arising in criminal proceedings, as to—
 - (a) whether a public authority has acted (or proposes to act)—
 - (i) in a way which is made unlawful by section 6(1) of the Human Rights Act 1998, or
 - (ii) in a way which is incompatible with EU law, or
 - (b) whether an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament is incompatible with any of the Convention rights or with EU law.

- (3) In subsection (2) –
 - (a) “public authority” has the same meaning as in section 6 of the Human Rights Act 1998;
 - (b) references to acting include failing to act;
 - (c) “EU law” has the meaning given by section 126(9) of the Scotland Act 1998.”
- (4) Section 288A (rights of appeal for Advocate General: devolution issues) is amended as follows.
- (5) In the heading, before “devolution issues” insert “compatibility issues and”.
- (6) In subsection (1) omit “in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues)”.
- (7) For subsection (2) substitute –
 - “(2) Where the Advocate General for Scotland was a party in pursuance of paragraph 6 of Schedule 6 to the Scotland Act 1998 (devolution issues), the Advocate General may refer to the High Court for their opinion any devolution issue which has arisen in the proceedings.
 - (2A) Where the Advocate General for Scotland was a party in pursuance of section 288ZA, the Advocate General may refer to the High Court for their opinion any compatibility issue (within the meaning of that section) which has arisen in the proceedings.
 - (2B) If a reference is made under subsection (2) or (2A) the Clerk of Justiciary shall send to the person acquitted or convicted and to any solicitor who acted for that person at the trial a copy of the reference and intimation of the date fixed by the Court for a hearing.”
- (8) In subsection (6) after “(2)” insert “or (2A)”.

20 Insert the following new Clause –

“References of compatibility issues to the High Court or Supreme Court

In the Criminal Procedure (Scotland) Act 1995, after section 288ZA (inserted by section *(Convention rights and EU law: role of Advocate General in relation to criminal proceedings)*) insert –

“288ZB References of compatibility issues to the High Court or Supreme Court

- (1) Where a compatibility issue has arisen in criminal proceedings before a court, other than a court consisting of two or more judges of the High Court, the court may, instead of determining it, refer the issue to the High Court.
- (2) The Lord Advocate or the Advocate General for Scotland, if a party to criminal proceedings before a court, other than a court consisting of two or more judges of the High Court, may require the court to refer to the High Court any compatibility issue which has arisen in the proceedings.
- (3) The High Court may, instead of determining a compatibility issue referred to it under subsection (2), refer it to the Supreme Court.

- (4) Where a compatibility issue has arisen in criminal proceedings before a court consisting of two or more judges of the High Court, otherwise than on a reference, the court may, instead of determining it, refer it to the Supreme Court.
- (5) The Lord Advocate or the Advocate General for Scotland, if a party to criminal proceedings before a court consisting of two or more judges of the High Court, may require the court to refer to the Supreme Court any compatibility issue which has arisen in the proceedings otherwise than on a reference.
- (6) On a reference to the Supreme Court under this section –
 - (a) the powers of the Supreme Court are exercisable only for the purpose of determining the compatibility issue;
 - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
- (7) When it has determined a compatibility issue on a reference under this section, the Supreme Court must remit the proceedings to the High Court.
- (8) An issue referred to the High Court or the Supreme Court under this section is referred to it for determination.
- (9) In this section “compatibility issue” has the meaning given by section 288ZA.””

21 Insert the following new Clause –

“Convention rights and EU law: criminal appeals to the Supreme Court

- (1) The 1998 Act is amended as follows.
- (2) In section 57(3) (EU law and Convention rights: excepted acts of the Lord Advocate) omit the words after paragraph (b).
- (3) In section 102 (powers of courts or tribunals to vary retrospective decisions) –
 - (a) in subsection (4)(b) at the end insert “or to a compatibility issue.”;
 - (b) after subsection (5) insert –
 - “(5A) Where the decision mentioned in subsection (1) is a decision of the Supreme Court on a compatibility issue, the power to make an order under this section is exercisable by the High Court of Justiciary instead of the Supreme Court.”;
 - (c) in subsection (7) before the definition of “intimation” insert –
 - ““compatibility issue” has the meaning given by section 288ZA of the Criminal Procedure (Scotland) Act 1995.”.
- (4) In paragraph 1 of Schedule 6 (devolution issues), after sub-paragraph (f) insert –
 - “But a question arising in criminal proceedings in Scotland that would, apart from this paragraph, be a devolution issue is not a devolution issue if (however formulated) it relates to the compatibility with any of the Convention rights or with EU law of –

- (a) an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament,
 - (b) a function,
 - (c) the purported or proposed exercise of a function,
 - (d) a failure to act.”
- (5) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (6) After section 288A insert –
 - “288AA Appeals to the Supreme Court: compatibility issues**
 - (1) For the purpose of determining any compatibility issue an appeal lies to the Supreme Court against a determination in criminal proceedings by a court of two or more judges of the High Court.
 - (2) On an appeal under this section –
 - (a) the powers of the Supreme Court are exercisable only for the purpose of determining the compatibility issue;
 - (b) for that purpose the Court may make any change in the formulation of that issue that it thinks necessary in the interests of justice.
 - (3) When it has determined the compatibility issue the Supreme Court must remit the proceedings to the High Court.
 - (4) In this section “compatibility issue” has the same meaning as in section 288ZA.
 - (5) An appeal under this section against a determination lies only with the permission of the High Court or, failing that permission, with the permission of the Supreme Court.
 - (6) Subsection (5) does not apply if it is an appeal by the Lord Advocate or the Advocate General for Scotland against a determination by the High Court of a compatibility issue referred to it under section 288ZB(2).
 - (7) An application to the High Court for permission under subsection (5) must be made –
 - (a) within 28 days of the date of the determination against which the appeal lies, or
 - (b) within such longer period as the High Court considers equitable having regard to all the circumstances.
 - (8) An application to the Supreme Court for permission under subsection (5) must be made –
 - (a) within 28 days of the date on which the High Court refused permission under that subsection, or
 - (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.”
- (7) Section 288B (appeals to the Supreme Court) is amended as follows.
- (8) For the heading substitute “Appeals to the Supreme Court: general”.
- (9) In subsection (1) –
 - (a) after “under” insert “section 288AA of this Act or”;
 - (b) omit “of a devolution issue”.

- (10) In sections 112(6), 121(5)(a), 121A(5), 122(4) and (5) and 177(8), after “under” insert “section 288AA of this Act or”.
- (11) In section 124(2) –
- (a) after “Part XA” insert “and sections 288ZB and 288AA”;
 - (b) after “purposes of” insert “a reference under section 288ZB or”;
 - (c) after “appeal under” insert “section 288AA of this Act or”.

22 Insert the following new Clause –

“Time limits for appeals on devolution issues in criminal proceedings

In Schedule 6 to the 1998 Act (devolution issues) after paragraph 13 insert –

- “13A In criminal proceedings, an application to the High Court for permission under paragraph 13 must be made –
- (a) within 28 days of the date of the determination against which the appeal lies, or
 - (b) within such longer period as the High Court considers equitable having regard to all the circumstances.
- 13B In criminal proceedings, an application to the Supreme Court for permission under paragraph 13 must be made –
- (a) within 28 days of the date on which the High Court refused permission under that paragraph, or
 - (b) within such longer period as the Supreme Court considers equitable having regard to all the circumstances.””

23 Insert the following new Clause –

“Review and power to amend sections (*Convention rights and EU law: role of Advocate General in relation to criminal proceedings*) to (*Time limits for appeals on devolution issues in criminal proceedings*)

- (1) The Secretary of State must arrange –
 - (a) for a review of the provision made by sections (*Convention rights and EU law: role of Advocate General in relation to criminal proceedings*) to (*Time limits for appeals on devolution issues in criminal proceedings*),
 - (b) for a report of the conclusions of the review to be made to the Secretary of State, and
 - (c) for a copy of the report to be given to the Scottish Ministers.
- (2) The review must be carried out as soon as practicable after the end of 3 years beginning with the day on which section (*Convention rights and EU law: criminal appeals to the Supreme Court*)(6) comes into force, or earlier if the Secretary of State considers it appropriate.
- (3) The review must –
 - (a) consider whether changes should be made to the provision made by sections (*Convention rights and EU law: role of Advocate General in relation to criminal proceedings*) to (*Time limits for appeals on devolution issues in criminal proceedings*);
 - (b) consider whether further provision should be made in relation to any matter dealt with by those sections;

- (c) consider (in particular) whether an appeal to the Supreme Court on a compatibility issue should lie only if the High Court of Justiciary certifies that the issue raises a point of law of general public importance.
- (4) The Secretary of State may by order –
 - (a) amend the provision made by sections (*Convention rights and EU law: role of Advocate General in relation to criminal proceedings*) to (*Time limits for appeals on devolution issues in criminal proceedings*);
 - (b) make further provision in relation to any matter dealt with by those sections.
- (5) Provision made by order under subsection (4) may –
 - (a) amend, repeal or revoke an enactment passed or made before the order is made;
 - (b) confer power on the Secretary of State or the Scottish Ministers to make an order or regulations;
 - (c) include consequential, transitional or saving provision.
- (6) In this section “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978) and an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament.
- (7) In making the first order under subsection (4) the Secretary of State must take into account the report made in accordance with subsection (1)(b).
- (8) No order under subsection (4) may be made unless the Secretary of State has consulted the Scottish Ministers.
- (9) A statutory instrument containing an order under subsection (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Clause 41

- 24 Page 31, line 26, leave out “section 38” and insert “the preceding provisions of this Part”
- 25 Page 31, line 28, leave out “section 38” and insert “the preceding provisions of this Part”

Schedule 2

- 26 Leave out Schedule 2

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